

ARKANSAS SUPREME COURT

No. CACR 01-1015

KEDRON JOHNSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 19, 2008

PRO SE PETITION FOR LEAVE TO
REINVEST JURISDICTION IN THE
TRIAL COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS [CIRCUIT COURT OF
PULASKI COUNTY, CR 2000-2710]

PETITION DENIED.

PER CURIAM

In 2000, a jury found petitioner Kedron Johnson guilty of rape and sentenced him to 300 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Johnson v. State*, 80 Ark. App. 79, 94 S.W.3d 344 (2002). Petitioner has filed in this court a petition in which he requests permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409.

Here, petitioner asserts that his claims fall within the last two categories, but none of the alleged facts support a claim in those categories. The petition is difficult to understand and petitioner's arguments are not always clear, but the claims do concern a statement made by Nicholas Thompson in an attached affidavit. Mr. Thompson avers in the affidavit that he was a codefendant of petitioner and that petitioner had no knowledge that the rape victim had been kidnapped or raped. Mr. Thompson additionally states that other codefendants admitted that petitioner did not commit a crime. Petitioner asserts that the prosecution withheld evidence, that apparently was the information contained in Mr. Thompson's statement and statements by the other codefendants. Petitioner does not identify specific documents or information and, aside from Mr. Thompson's statement, points only to portions of the record from his trial to identify the evidence that was allegedly withheld.

The petition clearly fails to show a fundamental error of fact extrinsic to the record, or any facts of which the defense was not aware during petitioner's trial. In its opinion on petitioner's direct appeal, the court of appeals noted that the prosecution clearly stated on the record that petitioner was not tried as an accomplice. The trial record further indicates that, from statements made by the prosecution, the defense was made aware of affidavits by codefendants regarding petitioner's guilt or innocence. The availability of such statements was not hidden and had been brought forward before rendition of the judgment.

Moreover, because he was not charged with the kidnapping and other crimes, the extent of petitioner's knowledge of, or participation in, those other crimes was of very limited relevance to the proceedings. Even had the prosecution withheld any evidence concerning that knowledge, the evidence would not have been material to the proceedings in petitioner's case. The victim in this case testified that she begged petitioner not to rape her, and that she told him she only wanted to live. Petitioner testified that the victim's version of the conversation that they had was not true, that he had no knowledge that she was being held against her will, and that he had consensual sex with the victim. Despite petitioner's allegation that the withheld evidence would have impeached the victim's testimony, statements by codefendants concerning petitioner's knowledge of the other crimes simply had no bearing upon the victim's credibility or the testimony concerning the conversation between petitioner and the victim that was in dispute at trial.

As a part of our review of a decision on a petition for writ of error coram nobis that makes a claim of withheld evidence, we determine whether there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the claimed evidence been disclosed at trial. *See Larimore*, 341 Ark. at 408, 17 S.W.3d at 94. Here,

it is clear that the evidence would have had no effect on the outcome of the trial.

Despite his assertion to the contrary, petitioner does not present a cognizable claim concerning withheld evidence or a third-party confession to the crime during the time between conviction and appeal. Mr. Thompson's statement is not a confession of the crime concerned in petitioner's proceedings, and it was not made during the time between petitioner's conviction and appeal. No other statement is identified by petitioner. Petitioner's claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. We therefore deny the petition.

Petition denied.